

# ARKANSAS SUPREME COURT

No. CR 07-407

JAMES KELLY HAYNES  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered      June 14, 2007

PRO SE MOTION TO RELIEVE  
COUNSEL AND APPOINT OTHER  
COUNSEL [CIRCUIT COURT OF  
SEBASTIAN COUNTY, FT. SMITH  
DISTRICT, CR 2001-936]

MOTION DENIED.

## PER CURIAM

In 2002, appellant James Kelly Haynes was found guilty of rape and burglary and sentenced as a habitual offender to life and 480 months' imprisonment. We affirmed. *Haynes v. State*, 354 Ark. 514, 127 S.W.3d 456 (2003).

Subsequently, appellant timely filed in the trial court a verified pro se petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. Attorney J. F. Atkinson, Jr., was appointed to represent appellant in the Rule 37.1 proceeding. On August 24, 2005, the court entered an order denying the petition. Mr. Atkinson filed a timely notice of appeal from the order but failed to perfect the appeal. On April 20, 2007, Mr. Atkinson filed a motion for rule on clerk, candidly admitting fault for the late tender of the record. On April 25, 2007, appellant filed a pro se motion for rule on clerk and a motion for appointment of counsel. We granted counsel's motion and declared the pro se motion for rule on clerk to be moot. As Mr. Atkinson was obligated to continue as attorney-of-record for the appeal, the pro se motion for appointment of counsel was also declared moot. *Haynes v. State*, \_\_\_ Ark. \_\_\_, \_\_\_

S.W.3d \_\_\_\_ (May 10, 2007).

Now before us is appellant's pro se motion filed May 15, 2007, in which he urges this court to relieve Mr. Atkinson and appoint other counsel on the grounds that Mr. Atkinson failed to perfect the appeal and has failed to communicate with him. He also notes that he has filed a complaint against Mr. Atkinson with the Committee on Professional Conduct.

The mere fact that Mr. Atkinson failed to perfect the appeal does not in itself demonstrate that appellant is entitled to other counsel. As of the date of this opinion, the Committee has not issued its response to appellant's complaint. As a result, we cannot say that Mr. Atkinson is no longer in good standing and unable to represent appellant on appeal. Accordingly, appellant's motion that Mr. Atkinson be relieved as counsel is denied. If action is taken by the Committee altering Mr. Atkinson's status, appellant is free to resubmit a motion for appointment of other counsel.

Motion denied.